

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FERNANDO NIEVES, JR.,

Plaintiff,

-v-

NEW YORK CITY DEPARTMENT OF EDUCATION,  
*et al.*,

Defendants.

-----X

:

:

:

:

:

:

:

:

:

:

:

-----X

24-CV-06267 (JAV)

ORDER

JEANNETTE A. VARGAS, United States District Judge:

On August 9, 2024, Plaintiff filed a Complaint (“Original Complaint”). ECF No. 1. On March 24, 2025, Plaintiff filed an Amended Complaint (“March Amended Complaint”), which named additional defendants. ECF No. 29. On April 1, 2025, Plaintiff filed a letter requesting “permission to add [ ] additional defendants [to his] amended complaint . . . filed on March 24, 2025.” ECF No. 30. On April 2, 2025, prior to this Court granting Plaintiff leave to further amend, the Plaintiff filed his Amended Complaint (“April Amended Complaint”) on the docket. ECF No. 31. The Court issued an Order on April 4, 2025, noting that Plaintiff had not received leave of the Court to file the April Amended Complaint, and that it would not be considered the operative pleading in this matter until the Court acted on Plaintiff’s request. ECF No. 32. On April 15, 2025, Plaintiff filed a letter motion seeking leave to file the April Amended Complaint. ECF No. 33. To date, the Court has not yet ruled on the pending motion for leave to amend.

On April 23, 2025, Defendants the New York City Department of Education (“DOE”), Jeffrey Chetirko, Anne Garner, Joyell Simmons, and Joseph Zaza (collectively the “City Represented Defendants”) filed a letter motion seeking an extension of time for the City Represented Defendants to respond to the April Amended Complaint. ECF No. 35. On April 25, 2025, this Court denied the City Represented Defendants’ request for an extension of time, as the April Amended Complaint was “not the operative pleading in this matter” and therefore no response was yet due. ECF No. 36.

On April 25, 2025, Defendants United Federation of Teachers, Kit Wainer, Tony Sclafani and Aristotle Galanis (collectively, the “Union Defendants”) filed a motion to dismiss the March Amended Complaint under Rule 12(b) of the Federal Rules of Civil Procedure. ECF Nos. 38, 43. The City Represented Defendants have also filed another motion for an extension of time, this time to respond to the March Amended Complaint. ECF No. 44.

It is hereby ORDERED that Plaintiff shall be granted leave to file a second amended complaint by **May 22, 2025**. Pursuant to Local Civil Rule 15.1, available at <https://www.nysd.uscourts.gov/rules>, any amended complaint should be filed with a redline, included as an attachment to second amended complaint, showing all differences between the original and revised filings. If Plaintiff wishes to rely on the April Amended Complaint that has

previously been docketed at ECF No. 31, he should file a letter informing the Court by **May 22, 2025**. Plaintiff should be aware, however, that he will not be given any further opportunity to amend the complaint to address any issues raised by Union Defendants' motion to dismiss. If a second amended complaint is filed it will replace, not supplement, the amended complaint filed on March 24, 2025.

On August 20, 2024, Plaintiff was granted permission to proceed *in forma pauperis* ("IFP"), ECF No. 4. Plaintiff therefore is entitled to rely on the U.S. Marshals Service to effectuate service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3). Due to the pending motion for leave to amend the complaint, this Court has yet to issue an Order of Service as to any of the newly added defendants from the March Amended Complaint or the April Amended Complaint. The newly added defendants have not been properly served and the timeframe for them to respond has not yet commenced.


So as to allow the case to proceed on a common schedule for all defendants, including those defendants who have been added since the filing of the Original Complaint but have yet to be served, the Court hereby ORDERS that the Union Defendants' motion to dismiss the March Amended Complaint shall be stayed, and the deadline for Plaintiff to respond to the motion to dismiss shall be adjourned *sine dia*. Similarly, the City Represented Defendants' deadline to respond to the March Amended Complaint is adjourned *sine dia*.

All Defendants' deadlines to respond to the second amended complaint shall likewise be stayed until such time as the Court sets a schedule for further proceedings in this matter.

The Clerk of Court is respectfully directed to terminate ECF Nos. 33, 43, and 44.

SO ORDERED.

Dated: May 2, 2025  
New York, New York

  
JEANNETTE A. VARGAS  
United States District Judge